

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LINDA McCORMICK,

Plaintiff,

v.

Case No. 08-CV-10075

ROBERT BRZEZINSKI, et al.,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
NOTICE OF APPEAL**

Pending before the court is Defendants Brzezinski's, Genik's, City of Livonia's, and Warra's motion of August 13, 2009, to dismiss Plaintiff's notice of appeal and to dismiss her appeal as frivolous. "As a general rule, a district court no longer has jurisdiction over an action as soon as a party files a notice of appeal" except where "the appeal is untimely, presents issues that the appellate court had previously decided in the same case, or is from a non-final, non-appealable order." *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir.1993). Here, the order of partial summary judgment from which Plaintiff appeals is not appealable, because it did not dispose of all claims or all parties. See Fed. R. Civ. P. 54(b); *Bonner v. Perry*, 564 F.3d 424, 427 (6th Cir. 2009) ("A grant of partial summary judgment that does not dispose of all parties and all claims is generally not immediately appealable unless the district court issues a [Federal Rule of Civil Procedure] 54(b) certificate."). "A notice of appeal from a plainly non-appealable order may properly be ignored by the district court." *Cochran v. Birkel*,

651 F.2d 1219, 1222 (6th Cir.1981). Although the court has authority to proceed and ignore the improper notice of appeal, it does not have authority to dismiss any notice of appeal. *Dickerson v. McClellan*, 37 F.3d 251, 252 (6th Cir.1994) (“[T]he decision to dismiss a notice of appeal rests with this court, not the district court.”). Accordingly, the court will proceed with this case, ignoring the notice of appeal, but it cannot dismiss the notice of appeal. Moreover, dismissal under 28 U.S.C. § 1915(a)(3) is inappropriate, because Plaintiff has not filed a motion with this court to proceed in forma pauperis on appeal. Accordingly,

IT IS ORDERED that Defendants’ “Motion to Dismiss Notice of Appeal” [Dkt. # 120] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 7, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 7, 2009, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522